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13 d/b/a DAZZLING CLEANING

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SETH SENECA, an individual, and
13 LISA ANDOH, an individual, on behalf
14 of themselves and all others similarly
15 situated,

16 Plaintiffs,

17 vs.

18 HOMEAGLOW, INC. D/B/A
19 DAZZLING CLEANING, a Delaware
20 corporation,

21 Defendants.

Case No. 8:23-cv-02308-JVS-ADS

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFFS' THIRD
AMENDED COMPLAINT
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(b)(6)**

Date: September 22, 2025

Time: 1:30 p.m.

Dept.: 10C

Judge: Hon. James V. Selna

Magistrate: Hon. Autumn D. Spaeth

Case Removed: 12/7/2023

Trial Date: None Set

1 PLEASE TAKE NOTICE that on September 22, 2025, at 1:30 p.m., or as
2 soon thereafter as the matter can be heard, in Courtroom 10C of the above-entitled
3 court, located at the Ronald Reagan Federal Building and United States
4 Courthouse, 411 West Fourth Street, Santa Ana, CA, 92701, Defendant
5 Homeaglow, Inc. (“Defendant” or “Homeaglow”) will and hereby does move this
6 Court for an order dismissing Plaintiff’s Third Amended Complaint pursuant to
7 Federal Rule of Civil Procedure 12(b)(6) on the grounds that the complaint fails to
8 state a claim upon which relief can be granted.

9 This motion is based on this notice, the accompanying memorandum of
10 points and authorities, the request for judicial notice and exhibits attached thereto,
11 all pleadings and papers on file in this action, and such matters as may be properly
12 considered by this Court in ruling on this motion. This motion is made following
13 the conference of counsel pursuant to Local Rule 7-3, which took place on July 14,
14 2025.

15
16 Dated: July 23, 2025

**ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP**

17
18 */s/ Michelle L. Gearhart*

19
20 James M. Wagstaffe
21 Michelle L. Gearhart
22 Attorneys for Defendant
23 HOMEAGLOW, INC.
24 d/b/a DAZZLING CLEANING

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Homeaglow is a digital application-based company that facilities “on-demand” home cleaning services. Its platforms use proprietary algorithms to connect individuals seeking home-cleaning services with professional cleaners. Homeaglow offers one-time cleaning services as well as a membership that entitles members to deeply discounted and unlimited monthly cleanings. Homeaglow offers a voucher for first time customers to receive a significant discount on their initial cleaning on the condition they sign up for a ForeverClean membership. The membership may be canceled any time, but doing so within the first six months results in the initial discounted cleaning being charged at full retail value. These terms and conditions are expressly stated on Homeaglow’s website, including the disclosure that the voucher “requires” a ForeverClean Membership.

Plaintiffs claim to have been deceived by Homeaglow because the voucher for the initial discount cleaning is advertised using a promotional marketing phrase of “Get Clean for \$19.” Plaintiffs claim to have not seen any of the information on the website explaining the terms and conditions of the voucher, and “believed” they were making a “one-off” purchase. Plaintiffs claim they did not consent to enrollment in the ForeverClean Membership. Relying on several purported internet reviews criticizing Homeaglow’s enrollment and cancellation process, Plaintiffs claim other consumers were misled.

Plaintiffs seek to represent a putative class, but fail to adequately allege a factual basis for their own standing to bring claims under California's Unfair Competition Law. Plaintiffs also fail to allege facts which satisfy the requirements of Federal Rule of Civil Procedure 23, and propose a broad class definition unsupported by the factual allegations. Many of Plaintiffs' claims also cannot be maintained based upon the law of the case. Defendant moves to dismiss accordingly.

1 **II. SUMMARY OF FACTUAL ALLEGATIONS**

2 Plaintiffs allege they are each a resident of California and that they both
3 “believed” they were purchasing a discounted cleaning from Homeaglow as a
4 “one-time transaction” and were “unaware” they were being signed up for the
5 ForeverClean membership. Third Amended Complaint (“TAC”), Dkt. 39, ¶¶ 6-7.¹
6 Both claim they would not have purchased the discounted cleaning had they known
7 these facts. *Id.* Plaintiffs allege Homeaglow advertises a limited voucher for
8 discounted home cleaning for \$19 using the promotion, “Get Clean for \$19.” *Id.*,
9 ¶¶ 9-10. After clicking on the promotion, consumers enter their email address and
10 their zip code, then a link stating “Get My Voucher.” *Id.*, ¶¶ 11-12. Next,
11 consumers see a page stating “Get 62% off every clean with ForeverClean
12 membership.” *Id.*, ¶ 13. On this page, Plaintiffs allege Homeaglow discloses for
13 the first time that “This voucher requires a 6-month ForeverClean membership.”
14 *Id.* It is after this page that a consumer proceeds with their purchase by entering
15 their billing information. *Id.*, ¶14. “The consumer clicks ‘Purchase & Schedule’ to
16 proceed, upon which they have purchased the discounted cleaning, and
17 unknowingly a ForeverClean Membership, and will then book the date and time
18 for that cleaning.” *Id.* 5

19 Plaintiffs allege, “Also buried in the fine print and sub-links on the page, the
20 ForeverClean Membership requires commitment to an initial term of six months.
21 Should a consumer desire to cancel the Membership prior to the conclusion of
22 initial term, they are charged and (*sic*) ‘early termination fee’ which is the delta
23 between a full-priced cleaning and the reduced-price cleaning.” TAC, ¶ 15.
24 Plaintiffs allege the website violates California’s Automatic Renewal Law (ARL),
25 Business and Professions Code section 17602. *Id.*, ¶¶ 17-23. Plaintiffs further
26 allege consumers enter into contracts with Homeaglow which contain a “liquidated

27
28 ¹ Pursuant to this Court’s Initial Order (Dkt. 32 at 6:25-26), a copy of the TAC (Dkt.
39) is attached hereto as Exhibit 1 and referred to herein as “TAC” throughout.

1 damages provision.” *Id.*, ¶ 25. Plaintiffs allege this provision “provides that should
2 the consumer cancel their ForeverClean Membership during the initial six-month
3 term, the consumer must pay ‘the difference between the full price of your first
4 cleaning at standard rates and the discounted price of your first cleaning.’” *Id.*
5 Plaintiffs claim this is a “liquidated damages provision” under California Civil
6 Code section 1671(d), and improper, because “the damages it suffers are the
7 monies paid to the cleaner” which amount is “easily fixable.” *Id.*, ¶ 26.

8 Plaintiffs seek to certify a class, claiming that on-line reviews reveal other
9 consumers were frustrated by Homeaglow’s “misleading” enrollment and
10 cancellation processes. TAC, ¶ 32. Plaintiffs seek a class period as “four years
11 preceding the date the first Complaint in this action is filed, until the full resolution
12 of this action...” *Id.*, ¶ 34. Plaintiffs propose the following sub-classes of persons:

- 13 (a) The Automatic Renewal Class: All persons in California who,
14 within the applicable statute of limitations period incurred renewal
15 fee(s) in connection with Defendant’s ForeverClean Membership.
- 16 (b) The Early Termination Fee Class: All members of the Automatic
17 Renewal Class who, within the applicable statute of limitations
18 period incurred and paid Defendant’s ForeverClean Membership
19 early termination fee.

20 *Id.*, ¶ 35.

21 **III. PROCEDURAL BACKGROUND**

22 Plaintiffs filed their initial complaint in Los Angeles County Superior Court
23 on November 3, 2023. On December 7, 2023, Defendant removed the action to this
24 Court. Dkt. 1. On January 12, 2024, Defendant filed a motion to compel arbitration,
25 which was later deemed applicable to Plaintiffs’ First Amended Complaint. Dkt.
26 11, 13, 17.

1 On February 7, 2024, this Court issued an order denying Defendant's motion
2 to compel arbitration. Dkt. 19.² While this Court concluded Plaintiffs had not
3 manifested their assent to be bound by Homeaglow's expansive "Terms &
4 Conditions" containing an arbitration provision, the court did conclude that a
5 contract had been formed between plaintiffs and Homeaglow, stating:

6 As alleged, Homeaglow (perhaps deceptively) offered Plaintiffs a
7 voucher for a discounted cleaning in exchange for \$19 and an
8 additional \$49/month recurring charge. (See FAC ¶¶ 27.) **Plaintiffs**
9 **accepted that offer when they paid the required upfront \$19 after**
10 **scrolling through various webpages, which included a brief set of**
11 **'Terms & Conditions.'** (Customer Experience Video at 0:11.) **At this**
12 **point, Plaintiffs and Homeaglow had formed contracts.**

13 Dkt. 19 at 12:3-8; emph. added.

14 The appellate court affirmed the trial court's denial of Homeaglow's motion
15 to compel arbitration. See Request for Judicial Notice ("RJN") Ex. B:
16 Memorandum. A formal mandate pursuant to Rule 41(a) of the Federal Rules of
17 Appellate Procedure was issued on April 10, 2025. RJN Ex. C.

18 The parties stipulated to allow Plaintiffs leave to file a Second Amended
19 Complaint realleging a cause of action for violation of California's Consumer
20 Legal Remedies Act (CLRA) in light of Plaintiffs' curing of the notice defect. Dkt.
21 28. Pursuant to the parties' stipulation, this Court issued an order granting the joint
22 stipulation and ordering the second amended complaint be filed within 10 days.
23 Dkt. 30. The SAC was filed on May 14, 2025. Dkt. 33. Defendant timely filed a
24 motion to dismiss the SAC on June 4, 2025. Dkt. 36.

25 On the date Plaintiffs' opposition to that motion was due, Plaintiffs filed a
26 Third Amended Complaint. Dkt. 39. Because the Court had not given Plaintiffs
27

28 ² The Order is attached to the Request for Judicial Notice as Exhibit A, but is
 referred to herein by its docket number throughout.

1 leave to file the TAC and Defendants' motion to dismiss the SAC remained on
2 calendar, the parties submitted a stipulation, and this Court ordered, that Plaintiffs
3 TAC be adopted as the operative complaint, vacating the motion to dismiss the
4 SAC, and setting Defendants' responsive deadline as 21 days after entry of the
5 Court's Order. Dkt. 41, 42. This motion timely follows.

6 **IV. LEGAL STANDARD**

7 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to
8 state a claim upon which relief can be granted." On a Rule 12(b)(6) motion, "all
9 material facts are accepted as true and are construed in the light most favorable to
10 the plaintiff." *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012)
11 (internal citation omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
12 However, dismissal is appropriate where the complaint lacks a cognizable legal
13 theory or sufficient facts to support a cognizable legal theory. See *Johnson v.*
14 *Riverside Healthcare Sys. LP*, 534 F.3d 1116, 1121 (9th Cir. 2008).

15 In other words, a complaint must "state a claim to relief that is plausible on
16 its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the
17 plaintiff pleads factual content that allows the court to draw the reasonable
18 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*,
19 556 U.S. 662, 678 (2009) (per curiam). This is "a context-specific task that requires
20 the reviewing court to draw on its judicial experience and common sense." *Id.* at
21 679. "[W]here the well-pleaded facts do not permit the court to infer more than the
22 mere possibility of misconduct, the complaint has alleged—but it has not
23 'show[n]—'that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P.
24 8(a)(2)).

25 "A court may . . . consider certain materials - documents attached to the
26 complaint, documents incorporated by reference in the complaint, or matters of
27 judicial notice - without converting the motion to dismiss into a motion for
28 summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

1 Under this doctrine, courts may take judicial notice of adjudicative facts that are
2 “capable of accurate and ready determination by resort to sources whose accuracy
3 cannot be reasonably questioned.” *Id.* at 909 (quoting Fed. R. Evid. 201(b)(2)).

4 Additionally, this Court is bound by its prior determinations in this case, as
5 affirmed by the court of appeal, which are now the law of the case. *Stacy v. Colvin*,
6 825 F.3d 563, 567 (9th Cir. 2016) (“The law of the case doctrine generally prohibits
7 a court from considering an issue that has already been decided by that same court
8 or a higher court in the same case.”). “Courts may dismiss a case without leave to
9 amend if the plaintiff is unable to cure the defect by amendment.” *Lopez v. Smith*,
10 203 F.3d 1122, 1129 (9th Cir. 2000).

11 **V. ARGUMENT**

12 **A. The Class Claims Are Overbroad and Fail to Meet the
13 Requirements of Rule 23**

14 i. The proposed sub-classes are overbroad and not supported
by the factual allegations.

15 A party seeking class certification must affirmatively demonstrate their
16 compliance with Rule 23—that is, that they are prepared to prove the requisite
17 factors. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011.) Thus, sufficient
18 facts supporting each factor must be pleaded. *Lucas v. Vee Pak, Inc.*, 68 F.Supp.3d
19 870, 882 (N.D. Ill. 2014). For a named plaintiff to obtain class certification, the
20 court must find: (1) numerosity of plaintiffs; (2) common questions of law or fact
21 predominate; (3) the named plaintiff’s claims and defenses are typical; and (4) the
22 named plaintiff can adequately protect the interests of the class. Fed. R. Civ. P.
23(a). Plaintiffs bear the burden of establishing these prerequisites. *Hanon v.
24 Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal citation omitted).

25 Even at the pleading stage, it is clear Plaintiffs’ proposed class definition is
26 overbroad and unsupported by sufficient factual allegations. A prerequisite to class
27 certification is the existence of an ascertainable class. *McElhaney v. Eli Lilly &
28 Co.*, 93 F.R.D. 875, 877 (D.S.D. 1982) (“Prior to a consideration of the criteria

1 established by Rule 23, the Court must determine whether a class exists, and is
2 capable of legal definition.”). It has been said that “[t]he definition of a class should
3 not be so broad as to include individuals who are without standing to maintain the
4 action on their own behalf.” *Clay v. American Tobacco Company*, 188 F.R.D. 483,
5 490 (S.D.Ill. 1999).

6 *a. The proposed “Automatic Renewal Class”*

7 Plaintiffs propose the following sub-class:

8 The Automatic Renewal Class: **All** persons in California who, within
9 the applicable statute of limitations period incurred renewal fee(s) in
10 connection with Defendant’s ForeverClean Membership.

11 TAC, ¶ 35; emph. added.

12 On its face, the proposed definition of the class lacks factual support and
13 falls far short of the requirements of Rule 23(b). This definition encompasses
14 *everyone* that purchased a discount voucher and signed up for the ForeverClean
15 membership, regardless of their intent or whether they were harmed. There is no
16 legal basis for including in the proposed class individuals who have not suffered
17 any claimed injury or would not claim to have been injured.

18 Federal Rule of Civil Procedure 23(a)(2) provides that “questions of law or
19 fact common to the class” are a prerequisite to class certification. “While Rule
20 23(a)(2) asks whether there are issues common to the class, Rule 23(b)(3) asks
21 whether these common questions predominate. Though there is substantial overlap
22 between the two tests, the 23(b)(3) test is ‘far more demanding,’ [citation] and asks
23 ‘whether proposed classes are sufficiently cohesive to warrant adjudication by
24 representation,’ [citation].” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d
25 1168, 1172 (9th Cir. 2010).

26 The factual predicate for the instant complaint and putative class claims is
27 that Plaintiffs were “unaware” they were being signed up for the ForeverClean
28 Membership and “would not have purchased the discounted cleaning” had they

1 known these facts. TAC, ¶¶ 6, 7, 50, 65, 71, 76, 86, 93. Plaintiffs further allege
2 consumers “only [] learn the truth when they receive a billing statement that
3 includes a \$49 Membership fee.” TAC, ¶ 27. This allegation is belied by the
4 allegations in paragraph 13 wherein Plaintiffs state “...Homeaglow discloses for
5 the first time that ‘This voucher requires a 6-month ForeverClean Membership’”
6 on its website *before* the checkout page, as well as judicial rulings in this case. See
7 *Id.*, ¶¶ 13-14.

8 In fact, it is now the law of the case that Plaintiffs and each putative class
9 member entered into contracts with Homeaglow that are controlled by Terms &
10 Conditions explaining the conditions of the discount voucher. *Stacy v. Colvin* (9th
11 Cir. 2016) 825 F.3d 563, 567, citing *Hall v. City of Los Angeles*, 697 F.3d 1059,
12 1067 (9th Cir. 2012) (“The law of the case doctrine generally prohibits a court from
13 considering an issue that has already been decided by that same court or a higher
14 court in the same case.”). In its ruling denying Homeaglow’s motion to compel
15 arbitration, this Court stated Homeaglow “offered Plaintiffs a voucher for a
16 discounted cleaning in exchange for \$19 and an additional \$49/month recurring
17 charge” for the requisite ForeverClean Membership. When Plaintiffs accepted that
18 offer and paid the upfront \$19, “Plaintiffs and Homeaglow had formed contracts.”
19 Dkt. 19, 12:3-8. The court held the “Terms & Conditions” presented before
20 Plaintiffs accepted the offer by paying \$19 (shown in the Customer Experience
21 Video at 0:11) are the only ones they agreed to. *Id.*, 19:8-11. Those “Terms &
22 Conditions” were quoted by this Court from the Video of the website as follows:

23 Valid only for new clients. Online appointment required. 24 hour
24 cancellation policy applies. Expires after 1 year. **Voucher requires a**
25 **ForeverClean Membership** which grants future cleanings at more
26 than 50% off. **Membership is charged at \$49/month.** Membership
27 can be cancelled any time. However, **canceling before 6 paid**
28 **months will result in first cleaning being charged at full price.**

Dkt. 19, 19:26-10:7 (emph. added).

1 This Court has already determined what the parties did and did not agree to.
2 In denying the motion to compel arbitration, this Court ruled that Plaintiffs had not
3 agreed to the lengthy “Terms & Conditions” that contained an agreement to
4 arbitrate because those were “additional” terms and conditions that were presented
5 after the parties had already formed contracts. See Dkt. 19 at 3-13.

6 Plaintiffs argued on appeal that the trial court’s ruling was correct, and the
7 appellate court accepted Plaintiffs’ and the trial court’s representation that the only
8 controlling “Terms & Conditions” are those presented before Plaintiffs input their
9 payment information to purchase the voucher. The appellate court stated, “at the
10 outset of the transaction, consumers are shown a set of ‘Terms & Conditions’ that
11 require the consumer to purchase a ForeverClean membership with their discount
12 voucher and discusses other terms related to voucher expiration and membership
13 pricing.” RJD Ex. B, p. 3. The appellate court held, “Homeaglow’s first set of
14 ‘Terms & Conditions’ expressly links the purchase of the voucher with a ‘required’
15 Forever Clean membership...” *Id.*, p. 4.

16 These Terms & Conditions were readily noticeable by this Court and by the
17 appellate court—so much so that both courts concluded “a reasonable consumer
18 would not know” that by clicking the “I Agree, Get Clean!” button that had a
19 hyperlink to Terms & Conditions containing an arbitration provision, “they were
20 assenting to any ‘Terms & Conditions’ *other than those that had already been*
21 *presented to them before their purchase of a cleaning voucher.*” RJD Ex. B, p. 5;
22 emph. added. The inference is that a reasonable consumer would have already
23 reviewed the “Terms & Conditions” quoted above and thus, there would be no
24 reason to click the hyperlink to review them again. Indeed, the appellate court cited
25 *Doe v. Massage Envy Franchising, LLC*, 303 Cal. Rptr. 3d 269, 277 (2022) for the
26 proposition “it is reasonable for consumers to believe that notice of terms of use
27 referred to terms that were previously presented.” *Id.*

28

Even assuming it is true that the named Plaintiffs here were “unaware” of the Terms & Conditions explaining that the transaction “requires the consumer to purchase a ‘Forever Clean membership’ with their discount voucher and discusses other terms related to voucher expiration and membership pricing,” (as characterized by the court of appeal) it does not follow that *all* persons who bought the voucher did not review those terms. RJD Ex. B, p. 3. Plaintiffs’ conclusory allegations that *all* consumers would not have purchased the voucher had they known about the membership is not plausible and cannot be maintained in light of the law of the case. Plaintiffs have not alleged a factual basis for certification of this proposed sub-class and will be unable to satisfy the requirements of Rule 23.

b. The proposed “Early Termination Fee Class”

12 Plaintiff proposes a second sub-class as follows:

13 The Early Termination Fee Class: **All** members of the Automatic
14 Renewal Class who, within the applicable statute of limitations period
15 incurred and paid Defendant's ForeverClean Membership early
16 termination fee.

17 | TAC, ¶ 35.

18 This proposed sub-class is similarly overbroad and not factually supported
19 by Plaintiffs' allegations. Consumers cancel subscription-based services for a host
20 of reasons. The only factual basis for the relief sought in the complaint is the
21 allegation that Plaintiffs did not read *any* of the disclosures relating to the terms
22 and conditions of the discount voucher, did not agree to the recurring charge, and
23 thus sought to cancel the membership *for that reason*. Individuals that canceled the
24 Membership for any other reason fall outside of the factual predicate for the claims
25 herein.

26 The same analysis as above is applicable here. This Court and the appellate
27 court denied Homeaglow's motion to compel arbitration based on the inference a
28 reasonable consumer would have read the Terms & Conditions quoted above,

1 which expressly states how an early termination of the Membership will be treated.
2 Plaintiffs also allege that this information is stated on the website: "Should a
3 consumer desire to cancel the membership prior to the conclusion of the initial
4 term, they are charged and (sic) 'early termination fee' which is the delta between
5 a full-priced cleaning and the reduced-priced cleaning." TAC, ¶ 15. There are no
6 factual allegations that this method of calculation is unreasonable, or that all
7 consumers were unaware of it. Indeed, it can readily be inferred that charging the
8 difference between the discounted rate and the actual rate simply makes
9 Homeaglow whole if a customer does not hold up their end of the bargain.

ii. Typicality is lacking.

11 As addressed above, Plaintiffs’ assertion that their claims are typical of the
12 claims of all members of the proposed sub-classes is not supported by the factual
13 allegations or judicial rulings. The purpose of the typicality requirement is to
14 ensure that the interest of the named representative aligns with the interests of the
15 class. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “The test
16 of typicality is whether other members have the same or similar injury, whether
17 the action is based on conduct which is not unique to the named plaintiffs, and
18 whether other class members have been injured by the same course of conduct.”
19 *Ibid.* Often, the typicality and commonality inquiries “tend to merge.” *Ruiz Torres*
20 *v. Mercer Canyons, Inc.*, 825 F.3d 1125, 1141, n. 11 (9th Cir. 2016).

21 Plaintiffs claim they and the putative class sustained damages “based on
22 Defendant’s failure to obtain Plaintiffs’ and the Class’s affirmative consent to the
23 automatic renewal offer terms or continuous service offer terms associated with
24 the ForeverClean Membership before charging their Payment Methods and/or
25 based upon Defendant’s ForeverClean Membership early termination fee.” TAC,
26 ¶ 41.

27 But Plaintiffs' claims are not "typical" of *every single person in California*
28 *in the past six years that has purchased a discount voucher*, which is the Class

1 Plaintiffs here propose. Individuals that have not been injured or claim to have
2 been injured would not have standing on their own and cannot be included. See
3 *Clay v. American Tobacco Company*, 188 F.R.D. 483, 490 (S.D.Ill. 1999). It is not
4 plausible that every individual that purchased a voucher had both the same “belief”
5 and same online experience the Plaintiffs did; yet, they ask this Court to engage in
6 just such a fiction.

7 Additionally, it is undisputed that Homeaglow’s website has not remained
8 static. As of the time of this Court’s ruling on the motion to compel arbitration on
9 February 7, 2024, the customer interface was different from that of the Plaintiffs
10 in March 2023. See Dkt. 19 at 3:9-16 and fn. 2, stating Plaintiffs requested the
11 Court take judicial notice of “this historic version of Homeaglow’s webpage.”

12 Plaintiffs have not sufficiently alleged a factual basis for typicality based on
13 the proposed sub-classes.

14 **B. Plaintiffs Have Not Alleged a Factual Basis to Establish Standing
15 Under the Unfair Competition Law**

16 California’s Unfair Competition Law (“UCL”) prohibits “unfair
17 competition,” which includes “any unlawful, unfair or fraudulent business act or
18 practice.” Bus. & Prof. Code, § 17200. Therefore, under the statute “there are three
19 varieties of unfair competition: practices which are unlawful, unfair or fraudulent.”
20 *Daugherty v. American Honda Motor Co., Inc.*, 144 Cal. App. 4th 824, 837 (2006).
21 “The UCL’s ‘unlawful’ prong ‘borrows violations of other laws ... and makes
22 those unlawful practices actionable under the UCL.’ [Citation.] “[V]irtually any
23 law or regulation—federal or state, statutory or common law—can serve as [a]
24 predicate for [an] ... ‘unlawful’ [prong] violation.”” *Rincon EV Realty LLC v. CP
25 III Rincon Towers, Inc.*, 43 Cal. App. 5th 988, 994 (2019), quoting *Candelore v.
26 Tinder, Inc.*, 19 Cal. App. 5th 1138, 1155 (2018).

27 In their first cause of action Plaintiffs allege a violation of the UCL’s
28 “unlawful and/or unfair” prong based on violations of California’s Auto Renewal

1 Law (ARL) (TAC at ¶ 47); False Advertising Law (FAL) (¶ 48); and Civil Code
2 §1671 (¶ 49)³.

3 A person has standing to bring a claim under the UCL only if they establish
4 that (1) he or she “has suffered” “economic injury” or “damage,” and (2) this injury
5 or damage “was the result of, i.e., caused by,” the unfair business practice “that is
6 the gravamen of [their] claim.” *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310,
7 322, 326, some italics omitted (2011) (*Kwikset*). “[F]ederal article III standing is
8 far broader than the standing requirement contained in section 17200, which
9 expressly requires a financial loss caused by the defendant’s conduct. As the
10 California Supreme Court explained ... ‘because economic injury is but one among
11 many types of injury in fact, the ... requirement that injury be economic renders
12 standing under section 17204 substantially narrower than federal standing under
13 article III, section 2 of the United States Constitution, which may be predicated on
14 a broader range of injuries.’” *Mayron v. Google LLC*, 54 Cal. App. 5th 566, 576
15 (2020).

16 A claim under the UCL must state factual allegations regarding an actual
17 “personal, individualized loss of money or property *in any non-trivial amount*.”
18 *Kwikset*, 51 Cal. 4th at 325; emph. added. “Because the lost money or property
19 requirement is more difficult to satisfy than that of injury in fact, for courts to first
20 consider whether lost money or property has been sufficiently alleged or proven
21 will often make sense. If it has not been, standing is absent and the inquiry is
22 complete.” *Ibid.*; see also *Mayron v. Google LLC, supra*, 54 Cal. App. 5th at 576.

23 Plaintiffs’ allegations do not include *facts* relating to their personal,
24 individualized loss of money in a non-trivial amount. Plaintiffs assert in a
25 conclusory allegation that they lost money in the form of paying the membership
26

27 ³ Plaintiffs’ Second Cause of Action separately pleads a violation of the FAL, and
28 the Eighth Cause of action separately pleads a violation of Civil Code section
1671(d).

1 fee and that plaintiff Andoh paid a cancellation fee. Plaintiffs do not provide any
2 factual information regarding when they purchased a voucher, when they
3 attempted to cancel the membership, any specific amounts they were actually
4 charged (after any refunds), or any other details to establish their standing to bring
5 this claim. Moreover, this Court has already concluded that Plaintiffs agreed to the
6 membership fee, which membership was a requisite for the initial deeply
7 discounted cleaning. Dkt. 19, 19:26-10:7. In order for any putative class member
8 to have standing, the named Plaintiffs must first establish their own standing. *In re*
9 *Tobacco II Cases*, 46 Cal. 4th 298, 306 (2009) (“standing requirements are
10 applicable only to the [plaintiff]-class representatives”).

11 To establish the second element of causation, Plaintiffs must allege and
12 show that their economic injury comes “as a result of” the unfair competition. Bus.
13 & Prof. Code, §§ 17204, 17535. Plaintiffs must show they ““actual[ly] reli[ed]””
14 on the ““allegedly deceptive or misleading statements”” and that it ““was an
15 immediate cause”” of their injury. *Kwikset*, at 326–327; see also, *Troyk v. Farmers*
16 *Group, Inc.*, 171 Cal. App. 4th 1305, 1349 (2009) (“the phrase ‘as a result of’
17 connotes an element of causation (i.e., [plaintiff] lost money because of
18 [defendants’] unfair competition”). There are no specific factual allegations
19 relating to the named Plaintiffs to meet this threshold requirement for maintaining
20 a UCL claim.

21 Plaintiffs also confusingly purport to bring a UCL claim based on a violation
22 of the FAL; however, it is not brought under the “fraudulent” prong of the UCL,
23 but lumped together with the other underlying statutes Plaintiffs allege under the
24 “unlawful and/or unfair” prongs.

25 California’s false advertising law bars “any advertising device ... which is
26 untrue or misleading.” Bus. & Prof. Code, § 17500. “Because this law and the
27 **fraudulent prong** of the unfair competition law substantively overlap [citations],
28 the plaintiff’s burden under these provisions is the same: To prevail on a claim

1 under the false advertising law, she must show that “““members of the public are
2 likely to be deceived”” [citations]” [citation] and must do so as adjudged through
3 the eyes of “the reasonable consumer” [citation].” *Shaeffer v. Califia Farms, LLC*,
4 44 Cal. App. 5th 1125, 1136 (2020); emph. added. This claim is not adequately
5 pled.

6 **C. Plaintiffs Have Not Alleged a Factual Basis to Establish Standing
7 Under the False Advertising Law**

8 Plaintiffs’ second cause of action for violation of the FAL seeks public
9 injunctive relief. TAC, ¶ 66. However, Plaintiffs merely allege in conclusory
10 language that defendants violated the statute, but fail to allege facts to establish
11 their standing to bring this claim directly.

12 Business and Professions Code section 17535, which allows for the
13 imposition of injunctive relief, requires such actions “be prosecuted by the
14 Attorney General or any district attorney, county counsel, city attorney, or city
15 prosecutor in this state in the name of the people of the State of California.” Bus.
16 & Prof. Code, § 17535. “Any person may pursue representative claims or relief on
17 behalf of others only if the claimant meets the standing requirements of this section
18 and complies with Section 382 of the Code of Civil Procedure.” *Id.* In other words,
19 Plaintiffs may sue if they have “suffered injury in fact and has lost money or
20 property as a result of a violation of” this statute, and comply with statutory class
21 action requirements. See *Guzman v. Bridgepoint Educ., Inc.*, No. 11cv69 WQH
22 (WVG), 2011 U.S. Dist. LEXIS 120611, at *13 (S.D. Cal. Oct. 19, 2011) (finding
23 plaintiff lacked standing because “Plaintiff’s conclusory allegations regarding
24 general misrepresentations do not “provide the ‘grounds’ of [their] “entitle[ment]
25 to relief.””). Like *Guzman*, there are no specific factual allegations to establish the
26 named Plaintiffs’ standing to pursue this claim.

27 Moreover, Plaintiffs’ conclusory allegations are contradicted by paragraph
28 15 and cannot be maintained based on the current law of the case. Plaintiffs allege,

1 “Had Homeaglow disclosed that a monthly membership fee was required,
2 Plaintiffs would not have purchased the discounted cleaning.” TAC, ¶ 65. But it is
3 already established (and Plaintiffs even allege) that Homeaglow’s website *did*
4 make such a disclosure and expressly conditioned the discount voucher on a
5 ForeverClean Membership, which is charged at \$49/month. See Dkt. 19, 12:3-8
6 (emph. added).

7 **D. Plaintiffs Fail to State a Claim for Violations of the CLRA**

8 Plaintiffs’ third cause of action alleges a violation of California’s Consumer
9 Legal Remedies Act (CLRA), Civil Code sections 1750, et seq.

10 “[T]he standing requirements of the CLRA are essentially identical to those
11 of the [unfair competition law] and the [false advertising law].” *Veera v. Banana*
12 *Republic, LLC*, 6 Cal. App. 5th 907, 916 (2016); *Hinojos v. Kohl's Corp.*, 718 F.3d
13 1098, 1108 (9th Cir. 2013) (same). CLRA claims based on alleged
14 misrepresentations also require that the plaintiff establish actual reliance. See
15 *Gonzales v. Nat. Factors Nutritional Prods.*, No. 2:24-cv-02584-DSF, 2024 U.S.
16 Dist. LEXIS 196853, 2024 WL 4609853, at *6 (C.D. Cal. June 28, 2024)
17 (“California courts have interpreted the ‘as a result of’ language in the CLRA as
18 requiring the plaintiff to plead and prove actual reliance in accordance with well-
19 settled fraud principles.”). “To adequately allege reliance, a plaintiff must, at
20 minimum, allege that he saw the representation at issue.” *Id.* (citing *Durell v. Sharp*
21 *Healthcare*, 183 Cal. App. 4th 1350, 1363 (2010)).

22 The same analysis as above applies here. The named Plaintiffs’ conclusory
23 allegations cannot be maintained in light of the law of the case. TAC, ¶¶ 68-72. To
24 the extent Plaintiffs attempt to allege that Homeaglow advertised a “one-off”
25 discounted cleaning which was misleading, pursuant to the law of the case
26 doctrine, it is already established that Homeaglow’s website fully discloses the \$19
27 voucher *requires* a ForeverClean membership, so there is no basis for Plaintiff’s
28

1 purported “belief” that the voucher was a “one-off” cleaning. Dkt. 19, 19:26-10:7.
2 The terms were disclosed and were accepted by the Plaintiffs.

3 **E. Plaintiffs Fail to State a Claim for Breach of Contract**

4 Plaintiffs’ fourth cause of action for Breach of Contract alleges that they
5 “never agreed that Homeaglow could charge them a monthly membership fee,” the
6 “term was not part of the parties’ agreement and Homeaglow did not have the right
7 to assess such charges,” and that Homeaglow’s conduct breached the agreement it
8 entered into with consumers. TAC, ¶¶ 74-79. This allegation is directly
9 contradicted by this Court’s interpretation of the parties’ agreement, which was
10 affirmed on appeal. This allegation cannot be maintained.

11 It is the law of the case that Plaintiffs entered into contracts with Homeaglow
12 controlled by the following Terms & Conditions:

13 Valid only for new clients. Online appointment required. 24 hour
14 cancellation policy applies. Expires after 1 year. Voucher requires a
15 ForeverClean Membership which grants future cleanings at more
16 than 50% off. **Membership is charged at \$49/month.** Membership
17 can be cancelled any time. However, cancelling before 6 paid months
will result in first cleaning being charged at full price.

18 Dkt. 19, 12:3-8, 19:26-10:7; emph. added.

19 This Court has already determined what the parties did and did not agree to.
20 The enforceable Terms & Conditions expressly state the Membership is charged at
21 \$49/month and Plaintiffs agreed to that when they accepted Homeaglow’s offer by
22 paying “the required upfront \$19” for the voucher. Dkt. 19, 12:3-8. Plaintiffs
23 cannot now allege Homeaglow breached the parties’ agreement *by charging them*
24 *a monthly membership fee* as this issue has already been preclusively determined
25 as a matter of law.

26 **F. Plaintiffs Fail to State a Claim for Conversion**

27 Plaintiffs’ Fifth cause of action alleges conversion claiming defendant made
28 charges to Plaintiffs’ and Class Members’ Payment Methods without authorization.

1 Even if not barred by the prior rulings in this case, Plaintiffs fail to allege facts
2 sufficient to state a claim for conversion.

3 As it has developed in California, the tort of conversion comprises three
4 elements: “(a) plaintiff’s ownership or right to possession of personal property, (b)
5 defendant’s disposition of property in a manner inconsistent with plaintiff’s
6 property rights, and (c) resulting damages.” 5 Witkin, *Summary 11th Torts*, § 810,
7 1115 (2025); *Welco Electronics, Inc. v. Mora*, 223 Cal. App. 4th 202, 208 (2014).

8 While California law holds that property subject to a conversion claim need
9 not be tangible in form, the law has been careful to distinguish proper claims for the
10 conversion of money from other types of monetary claims more appropriately dealt
11 with under other theories of recovery. “Money cannot be the subject of a cause of
12 action for conversion unless there is a specific, identifiable sum involved, such as
13 where an agent accepts a sum of money to be paid to another and fails to make the
14 payment. [Citation.]” *McKell v. Washington Mutual, Inc.*, 142 Cal. App. 4th 1457,
15 1491 (2006); see *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil &*
16 *Shapiro, LLP*, 150 Cal. App. 4th 384, 395 (2007) (*PCO*). “[W]here the money or
17 fund is not identified as a specific thing the action is to be considered as one upon
18 contract or for debt”—or perhaps upon some other appropriate theory—but “not for
19 conversion.” *Baxter v. King*, 81 Cal. App. 192, 194 (1927); see *Vu v. California*
20 *Commerce Club, Inc.*, 58 Cal. App. 4th 229, 231, 235 (1997) (rejecting conversion
21 claim where the plaintiff could not identify specific sum but only approximate
22 monetary losses); *PCO*, at p. 397 (same).

23 As noted above, there are no allegations relating to a specific sum Defendant
24 is alleged to have converted from each Plaintiff. Plaintiffs’ general allegation of this
25 requisite element, stating the amount is “capable of identification” is insufficient.
26 See *PCO, supra*, 150 Cal. App. 4th 397.

G. Plaintiffs Fail to State a Claim for Unjust Enrichment

Plaintiffs' sixth cause of action alleges unjust enrichment claiming defendant retained revenues derived from Plaintiffs' and the Class's purchase of the ForeverClean Membership and they are entitled to restitution. TAC, ¶ 86-87.

“Unjust enrichment is synonymous with restitution. [Citation.]” *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010) (*Durell*). A person is required to make restitution if the failure to do so would result in unjust enrichment. *First Nationwide Savings v. Perry*, 11 Cal. App. 4th 1657, 1662–1663 (1992). Restitution of the benefits conferred under a contract may be awarded if the contract is rescinded or determined to be unenforceable. *Durell, supra*, at 1370. Restitution based on unjust enrichment is not available, however, if an enforceable express contract determines the parties’ rights and obligations. *Ibid.*

This Court has already determined an enforceable contract exists which is controlled by the Terms & Conditions explaining early cancellation of the Membership results in the initial discounted cleaning being charged at full price. Plaintiffs allege the “early termination fee” is the “delta between a full-priced cleaning and the reduced-priced cleaning.” TAC, ¶ 15. There are no allegations (and no facts) that Homeaglow pays contract cleaners the same discounted rate it charges customers for the introductory membership cleaning. Thus, no claim for unjust enrichment is plausibly pled here.

H. Plaintiffs Fail to State a Claim for Negligent Misrepresentation

The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996). The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. Civ. Code, § 1710, subd. 2; *West v. JPMorgan*

1 *Chase Bank, N.A.*, 214 Cal. App. 4th 780, 792 (2013). Each element of a fraud
2 count must be pleaded with particularity so as to apprise the defendant of the defendant of the
3 specific grounds for the charge and enable the court to determine whether there is
4 any basis for the cause of action. *Committee on Children's Television, Inc. v.*
5 *General Foods Corp.*, 35 Cal. 3d 197, 216–217 (1983).

6 This is also a requirement of Federal Rule of Civil Procedure 9(b). Because
7 Plaintiffs' claims sound in fraud, they "must overcome a heightened pleading
8 standard under Rule 9(b)." *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023,
9 1031 (9th Cir. 2016). Specifically, Rule 9(b) reads as follows: "In alleging fraud or
10 mistake, a party must state with particularity the circumstances constituting fraud
11 or mistake. Malice, intent, knowledge, and other conditions of a person's mind may
12 be alleged generally." Fed. R. Civ. P. 9(b).

13 Plaintiffs here allege Defendant misrepresented in its promotional discounted
14 cleanings that customers can book a cleaning for \$19, but "omitted, failed to
15 disclose, and intentionally concealed from such advertisements and related
16 statements material facts concerning billing for an automatically-renewing
17 membership, cancellation of the Membership and the associated early termination
18 fee..." TAC at ¶ 89. Again, this allegation has been negated by the judicial rulings
19 which are now the law of the case, as well as other allegations in the TAC. The
20 relevant "Terms & Conditions" are readily apparent on the website and inform
21 consumers what the conditions are for a \$19 cleaning. A marketing catchphrase is
22 just that, and a reasonable consumer understands that.⁴ The factual allegations do
23 not meet the heightened pleading standard for this claim.

24
25
26 ⁴ A reasonable consumer is not going to believe Disneyland is actually the "happiest
27 place on earth" or that Kentucky Fried Chicken's food is so good you'll want to lick
28 your fingers ("finger licking good"). Nor would a reasonable consumer believe a
company would provide "one-off" extremely discounted cleaning services with no
strings attached.

I. Plaintiffs Fail to State a Claim for Imposition of an Illegal Penalty

2 Plaintiffs' eighth cause of action alleges a violation of California Civil Code
3 section 1671(d). Section 1671(d) states, "a provision in a contract liquidating
4 damages **for the breach of the contract** is void except that the parties to such a
5 contract may agree therein upon an amount which shall be presumed to be the
6 amount of damage sustained by a breach thereof, when, from the nature of the case,
7 it would be impracticable or extremely difficult to fix the actual damage." Civ.
8 Code, § 1671(d); emph. added. Plaintiffs allege the "early cancellation fee" is a
9 liquidated damages provision under this section and unlawful because "any actual
10 damages" defendant sustained by an "early termination of the ForeverClean
11 Membership are neither impracticable nor extremely difficult to fix." TAC, ¶ 98.
12 This claim for relief and Plaintiffs' factual allegations are internally inconsistent.
13 They are also inconsistent with this Court's prior determination of the parties'
14 contractual relationship and the terms that control it.

15 The question whether a contractual provision is an unenforceable liquidated
16 damages provision is one for the court. *Beasley v. Wells Fargo Bank*, 235 Cal. App.
17 3d 1383, 1393 (1991). First, this Court has already determined the parties' contract
18 terms. These terms expressly state, "Membership can be cancelled any time.
19 However, cancelling before 6 paid months will result in first cleaning being charged
20 at full price." Dkt. 19, 19:26-10:7.

21 Second, “to constitute a liquidated damage clause the conduct triggering the
22 payment must in some manner breach the contract.” *Morris v. Redwood Empire*
23 *Bancorp*, 128 Cal. App. 4th 1305, 1315 (2005). The SAC itself describes
24 defendant’s damages as resulting from an “**early termination** of the ForeverClean
25 Membership,” not a breach. SAC at ¶ 95; emph. added. Under California law
26 “[w]here a contract for a specified period of time permits a party to terminate the
27 agreement before its expiration in exchange for a lump-sum monetary payment, the
28 payment is considered merely an alternative to performance, and not a penalty.”

1 *Morris v. Redwood Empire Bancorp, supra*, 128 Cal. App. 4th at 1314 (citing *Blank*
2 *v. Borden*, 11 Cal. 3d 963, 970 (1974)). Such a clause, therefore, falls outside the
3 scope of section 1671(d) and is not prohibited. *Hedstrom v. Truxtun Radiology Med.*
4 *Grp.*, No. F056068, 2009 Cal. App. Unpub. LEXIS 5772, 2009 WL 2139061, at *3
5 n.1 (Cal. Ct. App. July 20, 2009) (a contractual “provision that authorizes payment
6 in exchange for early termination is generally considered an alternative to
7 performance and not a penalty.”). Here, if a customer chooses to end the
8 membership early, they can do so in exchange for payment of the full value of the
9 initial cleaning they received. *Blank, supra*, 11 Cal. 3d at 970.

10 Third, even if Plaintiffs’ early termination could be called a “breach” and this
11 provision were applicable, Plaintiffs concede the amount bears a relationship to
12 Homeaglow’s “actual damages” and is calculable. See TAC, ¶ 15. It is only when
13 there is no relationship between the liquidated damages and the damages the parties
14 anticipated would result from a breach, that a liquidated damages clause will be
15 construed as an unenforceable penalty. *Ridgley v. Topa Thrift & Loan Assn.*, 17 Cal.
16 4th 970, 977 (1998).

17 **V. CONCLUSION**

18 Based on the foregoing, Defendant respectfully requests the TAC be
19 dismissed.

20 Dated: July 23, 2025

**ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP**

23 /s/ *Michelle L. Gearhart*

24
25 James M. Wagstaffe
26 Michelle L. Gearhart
27 Attorneys for Defendant
28 HOMEAGLOW, INC.
d/b/a DAZZLING CLEANING

CERTIFICATE OF WORD COUNT

The undersigned, counsel of record for HOMEAGLOW, INC. d/b/a DAZZLING CLEANING, certifies that the memorandum of points and authorities contains 6,937 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 23, 2025

**ADAMSKI MOROSKI MADDEN
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